

Bechtel Construction Company and Henry Dolleman and Russell C. Williams and Michael R. Sterba

Millwrights, Piledrivers, Divers, and Highway Constructors Local Union 1026, United Brotherhood of Carpenters and Joiners of America, AFL-CIO and Henry Dolleman and Russell C. Williams and Michael R. Sterba and James H. Riddle. Cases 12-CA-14543-1, 12-CA-14543-2, 12-CA-14710, 12-CA-14856, 12-CB-3483-1, 12-CB-3483-2, 12-CB-3513, 12-CB-3522, and 12-CB-3528

August 31, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On March 3, 1993, Administrative Law Judge Lowell M. Goerlich issued the attached decision. The General Counsel filed limited exceptions and a supporting brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.¹

AMENDED REMEDY

Having found that Respondent Bechtel Construction Company has engaged in unfair labor practices in violation of Section 8(a)(1) and (2) of the Act, and that Respondent Union has engaged in unfair labor practices in violation of Section 8(b)(1)(A) of the Act, we shall order them to cease and desist and to take certain affirmative action designed to remedy their unfair labor practices and to effectuate the policies of the Act.

Having found that Respondent Bechtel Construction Company laid off Michael R. Sterba, Russell C. Williams, and Henry Dolleman in violation of Section 8(a)(1) and (2) of the Act, we shall order it to offer them immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, dismissing, if necessary, any employee hired since their layoffs to fill their positions.

As we have found that Respondent Union caused Respondent Bechtel Construction Company to lay off Sterba, Williams, and Dolleman, we shall order that the Respondent Union and the Respondent Employer

jointly and severally make Sterba, Williams, and Dolleman whole for any loss of pay they may have suffered as a result of the unfair labor practices against them by paying to them a sum of money equal to the amount they would have earned from the date of their unlawful layoffs to the date of valid offers of reinstatement, less their net interim earnings to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondents, Bechtel Construction Company, Florida City, Florida, its officers, agents, successors, and assigns, and Millwrights, Piledrivers, Divers, and Highway Constructors Local Union 1026, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following as paragraph A,2(a).

“(a) Offer Michael R. Sterba, Russell C. Williams, and Henry Dolleman immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed, and jointly and severally with Respondent Union make them whole for any loss of earnings and other benefits suffered as a result of the unfair labor practices against them, in the manner set forth in the remedy section of the decision.”

2. Substitute the following as paragraph B,2(b).

“(b) Jointly and severally with Respondent Bechtel Construction Company make Michael R. Sterba, Russell C. Williams, and Henry Dolleman whole for any loss of earnings and other benefits they may have suffered by reason of the unfair labor practices found against Local 1026.”

3. Substitute the attached notices for those of the administrative law judge.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT unlawfully lay off employees because they have engaged in internal union activities and/or in

¹ The General Counsel excepts only to the judge's inadvertent failure to provide explicitly that the Respondents shall be “jointly and severally” liable to make whole Michael R. Sterba, Russell C. Williams, and Henry Dolleman for any loss of earnings due to their unlawful layoff. We modify the judge's remedy and order accordingly.

order to discourage employees from engaging in such activities.

WE WILL NOT unlawfully assist and support a union by permitting a union officer to serve as our supervisor within the meaning of the Act.

WE WILL offer Michael R. Sterba, Russell C. Williams, and Henry Dolleman immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and WE WILL, jointly and severally with Respondent Union, make them whole for any loss of earnings and other benefits resulting from these layoffs, less any net interim earnings, plus interest.

WE WILL notify the above-named employees that we have removed from our files any reference to their layoffs and that the layoffs will not be used against them in any way.

BECHTEL CONSTRUCTION COMPANY

APPENDIX B

NOTICE TO MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT unlawfully cause the layoffs of employees because they engaged in internal union activities and in order to discourage employees from engaging in such activities.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their rights guaranteed by Section 7 of the Act.

WE WILL advise Bechtel Construction Company that we have no objection to its reinstatement of Michael R. Sterba, Russell C. Williams, and Henry Dolleman and WE WILL, jointly and severally with Respondent Bechtel Construction Company, make them whole for any loss of earnings or benefits which they suffered by reason of the layoffs.

MILLWRIGHTS, PILEDRIVERS, DIVERS
AND HIGHWAY CONSTRUCTORS LOCAL
UNION 1026, UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA,
AFL-CIO

Eduardo Soto, Esq. and Shelley Plass, Esq., for the General Counsel.

Williams F. Hamilton, Esq. and Kenneth R. Cass, Esq. (Holland & Knight), of Miami, Florida, for Respondent Bechtel.

Joseph Kaplan, Esq., of Miami, Florida, for Respondent Local 1026.

DECISION

STATEMENT OF THE CASE

LOWELL M. GOERLICH, Administrative Law Judge. The charge in 12-CA-14543-1 was filed by Henry Dolleman on June 21, 1991, and a copy thereof was served by certified mail on Respondent Bechtel Construction Company (Bechtel) on that same date. The charge in Case 12-CA-14543-2 was filed by Russell C. Williams on June 24, 1991, and a copy thereof was served by certified mail on Respondent Bechtel on that same date. The first amended charge in Case 12-CA-14543-2 was filed by Williams on July 8, 1991, and a copy thereof was served by certified mail on Respondent Bechtel on that same date. The second amended charge in Case 12-CA-14543-2 was filed by Williams on September 23, 1991, and a copy thereof was served by certified mail on that same date. The original charge in Case 12-CB-3483-1 was filed by Dolleman on June 21, 1991, and a copy thereof was served by certified mail on Respondent Millwrights, Pile-drivers, Divers, and Highway Contractors, Local Union 1026, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (the Union or Local 1026) on the same date. The amended charge in Case 12-CB-3483-1 was filed by Dolleman on August 28, 1991, and a copy thereof was served by certified mail on Respondent Local 1026 on that same date. The original charge in Case 12-CB-3483-2 was filed by Williams on June 24, 1991, and a copy thereof was served by certified mail on Respondent Local 1026 on that same date. The amended charge in 12-CB-34483-2 was filed by Williams on September 23, 1991, and a copy thereof was served by certified mail on Respondent Local 1026 on that same date.

An order consolidating cases, consolidated complaint and notice of hearing was issued on September 24, 1991. Among other things it was alleged in the consolidated complaint that Bechtel violated the National Labor Relations Act (the Act) by permitting James Flanagan to serve as its general foreman while treasurer of Local 1026 and that Respondent Local 1026 and Respondent Bechtel caused the layoffs of Dolleman and Williams of the Act.

The original charge in Case 12-CA-14710 was filed by Sterba on October 8, 1991, and a copy thereof was served by certified mail on Respondent Bechtel on October 9, 1991. The original charge in Case 12-CA-14732 was filed by John H. Riddle on October 22, 1991, and a copy thereof was served by certified mail on Respondent on that same date. The original charge in Case 12-CB-3528 was filed by Williams on November 4, 1991, and a copy thereof was served by certified mail on Respondent Local 1026 on that same date.

An order further consolidating cases, amended consolidated complaint and notice of hearing was issued on December 18, 1991.

Among other things, it is alleged in the complaint that Local 1026 had charged member Williams and imposed upon him a collectible fine because he had engaged in internal

union activities and that Respondent Local 1026 caused Bechtel to also lay off Michael R. Sterba.

The charge in Case 12-CA-148576 was filed by Dolleman on February 8, 1992, and a copy was served by certified mail on Respondent on that same date.

A complaint and notice of hearing was issued on February 21, 1992. In the complaint it was alleged that Bechtel unlawfully refused to recall its employee, Dolleman.

On February 25, 1992, a second order further consolidating cases and scheduling order was issued.¹

The Respondents filed timely answers denying that they had engaged in the unfair labor practices alleged.

The consolidated cases appearing in the caption came on for hearing in Miami, Florida, on March 9, 10, 11, 12, and 13, 1992.²

All parties were afforded full opportunity to be heard, to call, to examine and cross-examine witnesses, to argue orally on the record, to submit proposed findings of fact and conclusions, and to file briefs. All briefs have been carefully considered.

On the entire record in these cases and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT,³ CONCLUSIONS OF LAW, AND REASONS THEREFOR

I. THE BUSINESS OF RESPONDENT BECHTEL

At all times material herein, Respondent Bechtel, a Nevada corporation, with offices and places of business throughout the United States, including a facility in Cape Canaveral, Florida, has been engaged in the engineering and construction business.

During the 12-month period preceding the date of this consolidated complaint, Respondent Bechtel, in the course and conduct of its business operations described above purchased and received at its Cape Canaveral, Florida facility products,

¹The amended consolidated complaint filed by the General Counsel listed a fourth charging party, James H. Riddle. On July 22, 1991, Riddle signed a withdrawal request. Riddle did not attend the hearing in this matter nor did he respond to a subpoena directing him to attend. After the hearing was concluded the General Counsel moved to withdraw the following allegations from the amended consolidated complaint. Par. 10(a) as to the Respondent Bechtel and par. 10(b) and 11(b) entirely. Said motion is granted.

²On September 1, 1992, an order to reopen record was entered on Respondent Bechtel's motion.

The General Counsel withdrew the charges as they related to James H. Riddle, to sever Cases 12-CB-3522 and 12-CB-3523, to dismiss said cases, and amend the caption accordingly. The motion was granted. The caption has been amended.

³The facts found are based on the record as a whole and the observation of the witnesses. The credibility resolutions have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962). As to those witnesses testifying in contradiction of the findings, their testimonies have been discredited either as having been in conflict with the testimonies of credible witnesses or because the testimony was in and of itself incredible and unworthy of belief. All testimony has been reviewed and weighed in the light of the entire record. No testimony has been pretermitted.

goods, and materials valued in excess of \$50,000 directly from points outside the State of Florida.

Respondent Bechtel is now, and has been at all times material herein, an Employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

At all times material Millwrights, Piledrivers, Divers and Highway Constructors Local Union 1026, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (the Union) has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The Trial of Russell C. Williams

On February 20, 1991, Martin Belliveau, the union recording secretary, committed to writing the following statement which was communicated to Wells and Wilds:⁴

March 20, 1991

TO WHOM IT MAY CONCERN:

On or about February 20, 1991, in the mid afternoon, Russell C. Williams came by where I was working and made the following statement to me "I felt that Andy Wells and Randy Wilds are stealing money and grossly mismanaging union funds, and they are taking trips to exotic places at the Unions expense." I told him that this was a serious allegation unless he had proof.

Martin Belliveau
Recording Secretary⁵

Williams' version of the incident was that on February 14, 1991, he engaged in a discussion with Belliveau to whom Williams said in reference to the upcoming Union meeting, "Well, I guess we'll see how much was squandered this month." Belliveau replied, "—that's pretty harsh accusation." Williams responded, "Well, I didn't mean it. I mean I'm just joking around with you."⁶

Thereafter on February 15, 1991, Wells wrote Williams the following letter:

It has been brought to my attention that you have questions concerning the operation and questions concerning the way I bought the union vehicle, and that the tax status of this union. The questions you are interested in do not belong on the job. These are questions to be asked of me or the trustees at the Union Hall. May I remind you to listen carefully to the President when he closes the meeting.

In order to answer your questions I am asking that you attend the next Executive Board at 7:30 PM with your questions. I do not want the private business of this Union on jobs. I am asking you to attend, to once

⁴Andrew Ray Wells was the business manager and financial secretary of the Local. Randall Wilds was the President and Assistant Business Manager of the Local.

⁵Belliveau did not testify at the hearing.

⁶Wells had received a phone call from James Dever Flanagan, an executive board member, that he had heard on the job that Russell has said that "Randy and [Wells] were embezzling Union funds."

and for all, answer you questions. If you continue to divulge the private business of this Union on job sites I will do whatever necessary to correct it.

I am looking forward to your questions and giving you correct and honest answers. See you March 14, 1991 at 7:30 PM.

Williams appeared at the executive board meeting on March 14, 1991. Among others, Wilds, Belliveau, and Flanagan were present. According to Williams, Wells inquired about the accusation he had allegedly made Williams replied that he had said the word "squandering money" but did not direct the word at Wells or anybody personally, that he had said it in "jest." Williams further testified that Wells explained the details of the Union's truck purchase and in respect to the "exotic" trip to Hawaii Wells told him that "they were required to attend a meeting and be informed to know how to handle health and welfare issues that were pertaining to the Local."

Flanagan⁷ confirmed that at the executive board meeting Williams made "the remark that he was kidding about what he said."⁸

Wilds testified that Williams said that he did use the word "squandering" at the board meeting, whereupon Wilds pointed out to Williams that it had been reported to him that the word was "embezzling"⁹ and that Belliveau had said "stealing." Williams answered "I might have made a remark like that but it was a joke." Of the trip to Hawaii Wells explained that no local union funds were used for the trip but the expenses were paid by the Trust Fund for attendance at a meeting of trustees of which International Foundation conducted a seminar, "more of a schooling. . . . you have to attend 18 [classes] for the fund to pick up money for the cost of [the] trip."

After listening to the discussion it was the unanimous opinion of the board that charges be lodged against Williams, however, it was agreed that it was the individuals involved who should take the action, if any. According to Wilds "[i]t seemed at the time that Russell was satisfied with those answers." In fact Wilds testified that when they left the executive board meeting they did not "particularly" harbor the idea of filing charges against Williams.

Shortly after the executive board meeting a union membership meeting was held. The main issue considered at the meeting was whether the Union should increase its dues assessment. Williams was opposed to the increase which point of view he had expressed to other members.

At the meeting Williams requested permission to read a letter to the membership of which some copies had already been distributed. By a membership vote Williams was allowed to

read the letter which he did. A copy of the letter is as follows:

March 12, 1991

Dear Brothers and Sisters:

This is a letter to the membership to express my point of view in an organized, concise manner. My intent is not to persuade or impose my philosophy on anyone that does not agree with me, but I feel it is not only my God-given right but a constitutional guarantee to exercise my freedom of speech.

The following points are questions direct not only to the current governing Executive Board but to all members, active and retired:

1. Dues and assessments are in direct correlation to the "Gross Income Salary" of every working member of this Local. If our income is being reduced to insure the operation of the Local and the assessments on our income it is not enough to cover expenses, who's fault is it? Should we be penalized for the failure to sign contracts and insure a reasonable wage to work for, if the representatives we elected are not producing the income of which the Local receives a percentage of to operate on?

2. If we are willing to take cuts in pay to sustain our Local, why is not our body of representatives willing to make the same sacrifices temporarily in order to preserve the Local. Example: North Dade Trash, Turkey Point, Bridge Job, NISCO.

3. According to the March 4, 1991 Newsletter our membership has not been significantly reduced, meaning the contributing body has not been reduced by nothing more than a lack of work being created out of this Local.

4. I am not insinuating that I could do a better job or that I am interested in pursuing any position in the operation of this Local, I am merely stating as a member we should become more involved in the disbursements of the funds to operate this Local.

5. Why is it that we as members do not have any written record of the expenditures of this Local? I want to remind you that any view can be substantiated depending on the facts and figures or the presentation of these figures. It is hard for me to present exact numbers on the spending of monies because after several attempts to get this information, it has been brushed off as too much work for the secretary or met with other excuses.

It is my view that considering that it is our money being spent we should be able to receive full accountability upon request for all expenditures through this Local. I am not insinuating there is misappropriation of funds, I am merely bringing it to the attention of the members that there are some areas where improvement in spending practices could help elevate [sic] our financial bind we are no facing.

6. What kind of financial wisdom is being expressed when we buy a new truck and go on meetings in Hawaii during a period of financial dire straits? This kind of activity tends to give the impression of prosperity at the expense of the working stiff that make up the support

⁷James Dever Flanagan was the treasurer of the Local, its delegate to the District Council, a member of the executive board and general foreman for Bechtel. Flanagan had been union treasurer about 7 years.

⁸Wilds remembered that the executive board meeting, when Williams was asked the question about stealing Williams said that "when he said that we were stealing, that Andy and myself were stealing, that he had said it in jest."

⁹Flanagan testified that he asked Williams whether he had said that Wells and Wilds were "embezzling money." Williams answered "yes."

of this Local. I would like to ask how many members can afford a late model car with most of the accessories available, trips to distant resort areas, and a guaranteed income with overtime compensation through the term of office after election?

7. If this assessment is passed, what guaranteed [sic] does the membership have that spending will not increase at the present rate of spending which has lead us into this predicament were are faced with now.

I would like to say that I supported both Andrew R. Wills and and Randy Wilds in their bids for election to represent this Local. I feel that it is their responsibility to examine their conscience and to review their past policies of conducting business and spending funds with not only their private interests at heart but maybe look for ways to cut back and not put the burden of sustaining this Local on the shoulders of the already heavy load supported by the working members.

Fraternally Yours,
Russell C. Williams

Wilds testified, upon cross-examination, that in his opinion, the letter contained slander pointing to No. 1, No. 2, No. 5, and No. 6. In the testimony of Wells the following appears:

THE WITNESS: What do I think in the letter is slander on myself?

MS. PLASS: Correct.

As you view the Constitution as an office of the Union. THE WITNESS: I believe that accusations and statements that I have done things that are untrue about the money of the Union is slander against me. And the other things about the exotic trips and all that were using Union funds and all is untrue.

Thereafter the following charges were filed against Williams:

The undersigned hereby prefers charges against the following Brother:

NAME	Russell C. Williams	L.U.	1026
ADDRESS	17800 DE 296th Street		
	Homestead, FL	Zip	33030

For violation of (List Section, Paragraph and Page):
(Constitution and D.C. By-Laws: Trade Rules:
Laws):
Sec. 55, 1,5 and 13¹⁰

Specifically: (Brief statement of facts upon which charges are based):

On or About February 20, 1991, the accused [sic] stated to Brother Martin Belliveau that I and Randall

Wilds were stealing Union Monies and grossly mis-managing Union Fund [sic]. He also stated that I and Randall Wilds took unnecessary trip to exotic places at this unions expense. This all took place on jobsite. He also verified he made this statement before the Executive Board of this Union on March 14, 1991 and read a statement that I will address at the trial.

The violation charged took place on February 20, 1991
(date)

Turkey Point Power Plant Florida City
(Location and name of job)

Witnesses: (Name &
Address):

Martin A. Belliveau	James Flanagan
10511 SW 54th Street	12810 N E 9th Avenue
Miami, Florida 33165	North Miami, Fl. 33161

(Member filing charge)

Date received:

(Secretary)

Name and Address
Andrew R. Wells
2727 South Park Road
Hallandale, Fl. 33009

Randall Wilds
2727 S. Park Road
Hallandale, Fl. 33009

Wilds explained why the charges were filed:

A. Because previously, he said that I was stealing money and all, and I mean, that's not something you say about somebody that's in a business, you know—especially, I mean, it was a well know fact that I was running for reelection and at that time, for him to make those accusations that were untrue within any proof or whatever on a job site was wrong in my opinion.

On March 21, 1991, a letter was addressed to Williams by the recording secretary of the South Florida Carpenters District Council, United Brotherhood of Carpenters and Joiners of America (the Council)¹¹ on April 3, 1991. Williams ap-

¹⁰The Union's constitution and laws states:

OFFENSES AND PENALTIES

- A Section 55. Any officer or member found guilty after being charged and tried in accordance with Section 56, for any of the following offenses, may be fined, suspended or expelled only by a majority vote of the members of the Local Union District Council having jurisdiction of the offense. In case of Industrial Councils, fines or suspensions of membership rights may be imposed by majority vote of the Executive Committee. Expulsions may be ordered only by majority vote of the delegates to the Industrial Council.**
- (1) Causing dissension among the members of the United Brotherhood.
 - (5) Willful slander or libel of an officer or any member of the United Brotherhood.
 - (13) Violating the Obligation.

¹¹Local 1026 is an autonomous local affiliated with the District Council to which its sends delegates as do other locals. “. . . where

peared before the executive board committee of the Council as notified. After hearing the parties, Williams, Wells, and Wilds, the executive committee voted to process the charges.¹² According to Perodeau at the meeting, Wells said he thought he had been slandered by Williams' comments about him and Wilds. Williams was asked if he said "these things." His response was something to the effect of, "Well, I may have said that but it wasn't meant the way its coming out." And that's why we voted to let the trial committee hear everything that was said and let them decide whether their was guilt or innocence."

The next step in the process was the selection of the trial committee took place on May 1, 1991, at a District Council meeting Perodeau described the selection of the trial committee as follows:

When the trial committee is selected, we have a box with numbered balls similar to bingo type balls. The numbers on the balls correspond to the list of the delegates to the counsel and they shake the box up, they pull the balls out one at a time and I read off the—or the warden reads the number. I check the number against attendants list. If the person is present, I announce his name, and if he's eligible to serve on a trial committee, his name is written down.

When we get eleven people, then they put the—they put those eleven balls in the other side of this small box and then the conductor picks five balls from those eleven and those are the five people that are on the trial committee.

At that point, the chairman asks the defendant, the person changed, if he has any objection to any of the people that are on the trial committee, and he has the opportunity at that point to challenge any three of those five. He doesn't have to give a reason why he's challenging them, he just doesn't want those people to serve on the committee, and at that point, we would pick other names from the eleven.

The prosecutor is then given the same opportunity to challenge any three of those five names and the same thing would happen if he challenged somebody, we would pick someone else.

Neither the prosecutor nor the defendant challenged any of the five people that were named.

Williams approved the trial committee. None of the committeemen were members of Local 1026. The trial was convened on May 15, 1991, at the District Counsel in Hialiah. Minutes of the trial were taken by a 68-year old office secretary, Ella Wallace. Williams' testimony indicates that the minutes are fairly accurate. He took issue with nothing of great significance.

The minutes reveal that defendant¹³ Williams plead, "I fell [sic] I am not guilty." The defendant read the letter of

a District Council exists, the District Council will conduct any trials of individual members." The Council meets once a month.

¹² According to Eugene S. Perodeau, business manager for the Council, "This is a preliminary hearing for the purpose of establishing whether there is enough merit to the charges to warrant giving it to a trial committee."

¹³ In the minutes Williams is referred to as the defendant and Wells and Wilds as the prosecutor.

March 12, 1991. The minutes also reveal Williams said, "As far as a certain comment I made to Martz, this was after work. I said, 'Let's see how much money was squandered this month.' I never said embezzled or fraud. I did say squandering to Martz. I then said I was joking. If expressing your opinion is creating dissension, then I was guilty of that."

Wells commented on the truck purchase and trip to Hawaii indicating that the cost of the latter did not come out of the union fund. There was much discussion on these points. He also reviewed other matters in the March 12 letter defending his position, ending with the statement, "I think his letter is very defamatory towards us."

The dictionary definition of libel and slander was reviewed:

Several words in the dictionary . . . willful . . . done deliberately.

slander . . . the utterance of false charges or misrepresentations which defame and damage another's reputation. 2. a false and defamatory oral statement about a person.

libel . . . A handbill esp. attacking or defaming someone. b. written statement in which a plaintiff in certain courts sets forth his cause of action or the relief he seeks. 2. a written or oral defamatory statement or representation that conveys an unjustly unfavorable impression b. a statement of representation published without just cause and tending to expose another to public contempt (2) defamation of a person by written or representational means.¹⁴

Belliveau and Flanagan were called as witnesses. Belliveau testified¹⁵ that Williams had said "stealing"; Williams insisted it was squandering. Belliveau also testified:

MARTY: I did not feel he was joking. Four or five hours later he came by and said he was joking. I said that was nothing to joke about. It was very disruptive and took energies away from the Local and I did not feel it was funny.

The trial committee rendered the following unanimous verdict:

We, the Trial Committee, in the case of RUSSELL C. WILLIAMS, find him guilty [sic] of violation of Section 55 Paragraph 5 and recommend he be find [sic] \$150.00, and also find him guilty of violation of Section 55 Paragraph 13 and recommend he be fined \$150.00 plus the cost of Trial (\$35.00) for a total of \$335.00.

The Trial Committee also recommends that he attend all or if not possible, the majority of the meetings of his Local in order to be better informed.

Paul Cyman

¹⁴ "Squander" has been defined (The American Heritage Dictionary) as "1. To spend wastefully or extravagantly; dissipate."

¹⁵ All witnesses were under oath.

For 31
Against 0

Edd Holladay

Joe Burnside

Mark Essick

Mark Polis

The verdict was upheld by the District Council. Williams did not appeal. Williams failed to pay his fine and was suspended from membership in Local 1026 and December 19, 1991.

As full review of the events which touch on the charges filed against Williams and his trial show that he was denied due process nor was he denied the safeguards provided to union members who are charged with offenses under the constitution. That the trial committee found that Williams had slandered and libeled officers of the Union can not be gainsaid if credibility and inference is with the committee. There is no credible evidence that they did not fulfill their function in an impartial manner. Had I been on the trial committee, my vote might have been for Williams, however, I do not think it is my function to substitute my judgement for that of a union trial committee where it appears that trial committee had functioned according to the union constitution and rules and with impartiality. Since the charges against Williams were found to be well taken and affirmed by an impartial trial, the complaint is dismissed as to this issue.

The Supervisory Status of James Dever Flanagan

During the material time herein James Dever Flanagan worked for Bechtel as a general foreman at the nuclear power plant of the Florida Light and Power Company on the Turkey Point jobsite. He was assigned to the turbine deck, an area of around 250 by 50 feet. He was in charge of millwrights who worked under the general president's project maintenance agreement out of Local 1026. The employees were engaged in disassembling and reassembling turbine equipment utilized by the nuclear power plant. His immediate supervisor was Werner H. Lohrke, the mechanical superintendent for Bechtel. Richard LeRoy Bibber also worked on the site. He was the turbine construction supervisor for the Florida Light and Power Company. Bibber described his duties:

I was providing technical information as far as the technical expertise which was required to disassemble, reassemble, and do any maintenance work on the turbine generators.

Also as a construction supervisor, I was assigned to the turbine deck to ensure that the work was being carried out in a safe manner, in an efficient manner, a proper manner"

Bechtel employees who were doing the contracting work were not under his direct supervision.

Martin Belliveau worked as a foreman under Flanagan. Lohrke, Bibber, and Flanagan carried radios by which they sometimes communicated. According to Bibber, Flanagan was involved with him and Lohrke, ". . . we would lay out the basic jobs we wanted to do." Bibber testified that he did

his communicating with Lohrke but "there was an understanding that if he were not there, that I could talk directly with Jim [Flanagan]." Bibber also discussed the way jobs were to be done with Flanagan. "If I had a better way—his may not necessarily have been wrong, but if I felt that I had a better way due to the fact that I have had a number of years of turbine experience, I would make the recommendation."

According to Lohrke he told Flanagan to tell millwright Henry Dolleman that if "he didn't do better he [would] be fired. . . . First I told him to get his work better." "Get him to work." Further testifying, Lohrke said, "I usually don't talk to the men myself about performance . . . [b]ecause that's the foreman's job, that's part of his job." When Lohrke was asked who made the decision to lay off on June 17, 1991, he answered, "I made a decision, with Flanagan too." Flanagan chose the employees to be assigned to the night shift, including employee Russell Curtly Williams.

According to Flanagan when he saw a jurisdictional violation he would approach Stover, the project manager of Bechtel who was the "man ultimately responsible for making the assignment of work to [the] various crafts." Flanagan described his "typical" workday:

. . . I would go in, in the morning, and sit with Werner Lohrke, and Dick Bibber, and they would give me a list of work items that need[ed] to be completed that day.

I would go on the Turbine Deck, and get with Mary Belliveau, and we would split up the work assignments, and then we would designate who would go do them [sic] work assignments.

Throughout the day we would be doing back and forth to each set of millwrights, usually partners, and making sure the work was being done; make sure it was being done correctly. If they had any questions; that we would try to resolve them. If we couldn't resolve them, then we could go back Werner Lohrke, or Dick Bibber, for assistance in getting each project completed.¹⁶

According to Flanagan he suggested to Lohrke and Bibber "about going to three shifts on the oil flush instead of two . . . [s]o we can keep three more millwrights working instead of laying them off." His suggestion was accepted.

¹⁶ Flanagan also testified:

Q. As General Foreman, you were the boss of the Foreman correct?

A. Yes.

Q. And, you supervised the decisions that the Foreman was making?

A. Yes.

Q. Did you have overall responsibility for making the assignments, with respect to the work list that was provided to you by Mr. Lohrke?

A. Yes.

Q. And, how did you go about making the determination as to who would work which job, and which assignment?

A. No formula, or nothing. Just picked out the men to do the work.

Q. Did you take into consideration the ability of each one of your workers, as with respect to the task that was being assigned.

A. On some assignments, yes.

MR. HAMILTON: No further questions, Your Honor.

Additionally, Flanagan signed timesheets as foreman, he received \$1.75 an hour above scale, he could require and chose employees for overtime, he could request material with which to work, he could caution employees about their work habits, he signed termination forms, and he instructed new employees.

A supervisor is defined in Section 2(11) of the Act as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The law on the subject is well summarized by Judge Itkin in the case of *Amperage Electric*, 301 NLRB 5 at 13 (1991):

Actual existence of true supervisory power is to be distinguished from abstract, theoretical, or rule book authority. It is well established that a rank-and-file employee cannot be transformed into a supervisor merely by investing him or her with a "title and theoretical power to perform one or more of the enumerated functions." *NLRB v. Southern Bleachery & Print Works*, 257 F.2d 235, 239 (4th Cir. 1958), cert. denied 359 U.S. 911 (1959). What is relevant is the actual authority possessed and not the conclusory assertions of witnesses. And while the enumerated powers listed in Section 2(11) of the Act are to be read in the disjunctive, Section 2(11) also "states the requirement of independence of judgment in the conjunctive with what goes before." *Poultry Enterprises v. NLRB*, 216 F.2d 798, 802 (5th Cir. 1954). Thus, the individual must consistently display true independent judgment in performing one or more of the enumerated functions in Section 2(11) of the Act. The performance of some supervisory tasks in a merely "routine," "clerical," "perfunctory" or "sporadic" manner does not elevate a rank-and-file employee into the supervisory ranks. *NLRB v. Security Guard Service*, 384 F.2d 143, 146-149 (5th Cir. 1967). Nor will the existence of independent judgment alone suffice; for "the decisive question is whether [the individual involved] has been found to possess authority to use [his or her] independent judgment with respect to

the exercise [by him or her] of some one or more of the specific authorities listed in Section 2(11) of the Act." See *NLRB v. Brown & Sharpe Mfg. Co.*, 169 F.2d 331, 334 (1st Cir. 1948). In short, "some kinship to management, some empathetic relationship between [supervisor] and employee, must exist before the latter becomes a supervisor of the former." *NLRB v. Security Guard Service*, supra.

The following factors convince me that while working as general foreman for Bechtel, Flanagan was a supervisor within the meaning of the Act:

1. Belliveau, a foreman, worked under Flanagan whose decisions Flanagan supervised.
2. Flanagan carried a radio hookup with Lohrke and Bibber.
3. Flanagan was involved in the layout of jobs.
4. If Lohrke was not present Bibber communicated directly with Flanagan.
5. Bibber discussed the way jobs ought to be done with Flanagan.
6. Flanagan delivered warnings to employees in respect to the work habits.
7. Part of Flanagan's job was to talk to employees about work performance.
8. Lohrke made decisions to lay off employees ("with Flanagan too").
9. Flanagan chose employees for the night shift.
10. Flanagan alleged jurisdictional violations to the project manager.
11. Flanagan, taking into consideration the worker's ability, assigned work to the millwrights based upon his judgment as to which employee was to receive the assignment.
12. Flanagan monitored the work of the millwrights.
13. Flanagan suggested a third shift which was accepted.
14. Flanagan signed two sheets and chose and assigned employees for overtime.
15. He instructed new employees.
16. He received more wage than employees working under him.
17. He was designated the General Foreman. An employee could not escape the conclusion that Flanagan was a supervisor to whom they looked to as their boss.

I find that Flanagan was a supervisor within the meaning of the Act. See *Clark & Wilkins Industries*, 290 NLRB 106 (1988); *MacDonald Miller Co.*, 277 NLRB 701, 703 (1985); and *Amperage Electric*, supra.

In regard to Martin Belliveau, there is not sufficient evidence in the record to determine whether he is a supervisor within the meaning of the Act or not.

The Union Election—June 13, 1991

At the May 9, 1991 meeting of Local 1026 candidates for union officers were nominated. The election was held on June 13, 1992; the results of the election were as follows:

BALLOTS CAST	VOTING POSITION	PRECINCT	
		163	
		POSN.	COUNT.
PRESIDENT (No OPPOSITION)			
RANDALL WILDS	20	20	133
BUSINESS MANAGER & FINANCIAL SECRETARY			
HENRY DOLLEMAN	24	24	40
ANDREW WELLS	25	25	120
VICE PRESIDENT			
CHARLES BROOKS	29	29	49
RICHARD MATTHEWS	30	30	94
TREASURER			
JAMES FLANAGAN	31	31	78
MARCOS VERA	32	32	70

BALLOTS CAST	VOTING POSITION	PRECINCT	
		163	
		POSN.	COUNT.
CONDUCTOR			
RAY HENDY	33	33	45
GERALD WIERSMA	34	34	99
RECORDING SECRETARY (No OPPOSITION)			
MARTIN BELLIVEAU	36	36	137
WARDEN (No OPPOSITION)			
MARK BELLIVEAU	38	38	134
TRUSTEE			
JOHN SERENCKO	59	59	44
JOSEPH SCHIRO	60	60	93
RUSSELL WILLIAMS	61	61	12
DISTRICT COUNCIL DELEGATE & ALTERNATE (VF 2)			
MARTIN BELLIVEAU	62	62	103
JAMES FLANAGAN	63	63	71
JAMES KETNER	64	63	37
NORBERT McLAUGHLIN	65	65	41
STATE COUNCIL CONVENTION (VF 2)			
MARTIN BELLIVEAU	67	67	93
JAMES FLANAGAN	68	68	60
FRANCIS HALGAS	69	69	19
JAMES KETNER	70	70	18
NORBERT McLAUGHLIN	71	71	21
CARL SLOAN	72	72	35
RUSSELL WILLIAMS	73	73	9

Alleged discriminatee Henry Dolleman, who was running for business manager and financial secretary, and alleged discriminatee Williams, who was running for trustee and State Council Convention, opposed the election of Wells and his slate. Alleged discriminatee Michael R. Sterba nominated Williams.

Wells ran on a slate of candidates, which was referred to as the team. In opposition a leaflet was distributed which stated "Let this be your voting ticket."

Business Agent	Henry Dolleman
Vice President	Chuck Brooks
Treasurer	Marco Veara
Trustee	John Schrenko
Conductor	Ray Hendy ("Six Pack")

All these candidates were defeated. (R.U. Exh. 4.)

As noted above, Dolleman and Williams both lost. The Wells team won. The salary of Wells, against whom Dolleman was running, was approximately \$67,000 in the years 1989 to 1990. Flanagan who had been nominated by Wells was also elected District Council delegate and to the State Council Convention as well as treasurer.

Creation of Second and Third Shifts

As of May 30, 1991, 30 millwrights were on Bechtel's payroll, all on the day shift. On June 3, 1991, a second shift was commenced with seven millwrights. On June 4, 1991, an eighth millwright was added and on June 10, 1991, a total of 11 millwrights were assigned to work the second shift while 19 millwrights were assigned to work the day shift.

According to Lohrke, Bechtel created the second shift because "we didn't have enough time to do all the work." Roger F. Paddock, a contract construction supervisor for

Bechtel,¹⁷ testified, "The reason was to maximize the utilization of our turbine gantry crane."

On June 18, 1991, a third shift was established to handle an oil flush.¹⁸ According to Paddock three millwrights and a foreman worked on each shift who were taken from the "millwright pool" of employees. The third shift was discontinued on June 27, 1991.

The Layoff on June 17, 1991

On June 17, 1991, four employees were laid off among whom were the alleged discriminatees, Dolleman, Williams, and Sterba. According to Bibber, he, Ralph Crawford, and Paddock, Florida Light and Power employees, "let [Phil Dyson of Bechtel] know that there was going to be a reduction in our manpower needs . . . that we would talk with Werner [Lohrke] and it would be up to Werner Lohrke to make the decision as to who was going to be laid off." Paddock testified that the decision to layoff was made "the first week of June." Six employees were to have been laid off.¹⁹ Later this number was reduced to four. The number

¹⁷ After Respondent Bechtel's motion to reopen the record was granted, Bechtel offered the testimony of Roger F. Paddock. Paddock described his duties as follows:

My responsibilities as construction supervisor was helping Florida Power and Light Maintenance Department formulate the contract; advise Florida Power and Light in the award stage; and also after the award of the contract to be responsible for the schedule, safety, and quality control aspects of whatever particular contract that was involved.

¹⁸ Paddock described an oil flush as "very similar to changing the oil in your automobile . . . the reason that you perform high velocity oil flush is to take those impurities, water, moisture, out of the oil."

¹⁹ Flanagan testified that "it was said that" after the oil that they would lay off the six people that came in." This testimony certainly raises doubts since the layoffs were before the oil flush commenced.

“dropped” to four “when two people were unable to be employed.”

Bibber testified that as June 1, 1991, Bechtel had not anticipated a layoff on June 17, 1991. He further testified:

The layoff had occurred due to a number of reasons. First of all, some of the bearings, the Number 7 and 8 bearings on the Unit 3 generator which is primarily where we’ve been spending most of our time was shipped out and revamped and rebored, and they came back from Westinghouse and they had bored them wrong.

So that basically brought to an end all work on [the] Unit 3 generator for the time being because we needed the bearings in place to do that. So that was a big reduction in workload right then and there.

Also I had mentioned earlier that Westinghouse was doing a large amount of machining work for us. We had installed what they call new blade rings in the high-pressure turbine which was located up at this end. I pointed that out.

And that stainless steel blade rings had to go back to the factory for additional machining. Once again, this reduced the amount of workload that we had anticipated.²⁰

And so due to the fact of parts coming back or having [been] sent back for rework—I mentioned Mr. Roger Paddock and Ralph Crawford—we sat down, we determined what our work loads were, we looked at our manpower loading at the time, and the two just did not add up. And we knew we had to get rid of some people.

Paddock’s testimony was somewhat similar.

According to Paddock, at the beginning of the dual unit outage²¹ the tasks which were assigned to the millwrights (the three alleged discriminatees were millwrights) were the removal of the Unit Three generator rotor, the “problem of what caused the vibration on Unit Four,” the “five-year inspection on the high pressure turbine, which involved removing the H.P. cover, removing the H.P. rotor, taking it out and sitting it aside, performing non-destructive testing on [unit] N.D.E. . . . and the high velocity oil flush.” Millwright manpower was initially based on those needs by consultation between Paddock, Bibber, and Lohrke.

Continuing the testimony of Paddock, “The first project that was encountered was removal of the Unit Three generator rotor.” The removed generator rotor was “taken to the construction barge slip and sent off to Westinghouse for refurbishing.” It was anticipated that the rotor generator would be returned around the end of May. As of this date the millwrights became “actively involved in pursuing the generator vibration problem.” In about the first part of June work was commenced on setting up the “high velocity oil flush.” This work had been scheduled “probably the middle of May.” The equipment for the oil flush which arrived about the first of June was furnished by Westinghouse.²² It took about 3 weeks to set up the equipment. “[I]t took us approximately

two weeks to satisfy the requirement to clean up the oil.” “[I]f it took us two and a half to three weeks to get set up for it, it would take us almost an equal number of time to disassemble it, because we not only had to disassemble it, we had to clean it and package it up, and inventory it.” At the time the oil flush job was set up, Respondent Bechtel was aware of the time it would take to complete the job.

As noted above according to Paddock the decision to lay off employees was first discussed in the first week in June. On June 3, 1991, as noted a second shift of millwrights was established. According to Paddock, “There were millwrights hired for [the] second shift.”²³

Paddock further testified that certain bearings which had been sent to Westinghouse to be bored or drilled were returned to the site around the first of June. These had been bored or drilled “to the wrong diameter.” They were returned to Westinghouse. The bearings were “re-babbitted, re-drilled, [and] re-bored.” Paddock testified that the return of the bearings to Westinghouse for reboring around the first of June “was in essence a major decision in making the determination to lay off the millwrights.”²⁴ Which decision was “initially” discussed among Paddock, Bibber, and Lohrke around the first of June. If Paddock is credited on this point it would appear that millwright work decreased when the bearings were returned to Westinghouse and increased when Westinghouse again returned the bearings to Bechtel. Thus, millwrights were retained by Bechtel at a time when millwright work decreased and were laid off when millwright work increased.

The General Counsel points out:

The total hours worked by millwrights per week increased from about 50 per week between June 2 and June 22 to 58.1 (June 23–29), 60.8 (June 30–July 6) and 56.0 (July 7–13).

This post-layoff increase in overtime work averages 8 hours per week per millwright. As there were 25 millwrights working after June 23, the increase in overtime work after the June 17 layoff averages 200 per week. Significantly, four millwrights were laid off on June 17 and one was fired on June 23; assuming each of those five millwrights worked 40 hours per week, they would have worked 200 hours of regular time between June 23 and July 13. Instead, the remaining 25 millwrights worked an average of 200 hours of additional overtime each week.

Paddock attributed this additional time as overtime required by the oil flush, a continuous operation; a problem with hydrogen seal rings, support for Westinghouse “in their work on the high pressure turbine,” and “to restore the unit and get the Westinghouse [oil flush] equipment out of the site.” Paddock further testified that he first became aware of the problem with the hydrogen seal rings “right around the first week of June” and at that time he knew it would re-

²⁰ Paddock does not point to this as a reason for the layoffs.

²¹ “. . . dual unit outage is the term used for all the work that was basically going in and at Turkey Point.” The dual outage commenced in “December of 1990.”

²² The oil flush equipment was rented to Bechtel by Westinghouse.

²³ Lohrke testified that “some new hires” were put on the night shift.

²⁴ Lohrke testified that Bibber wanted the layoffs because of “the lack of work. . . . Westinghouse parts didn’t come back to the job.” However, Westinghouse parts did come back to the job by the time of the layoffs.

quire additional millwright man hours. The high pressure turbine problem occurred July 2 or 3.

Paddock was asked:

Q. As of the first week of June, when the initial decision was [made] to lay off some millwrights, you knew at that point that the nature of the business is such in that type of work that problems are very likely to come up that will require additional work by millwrights.

A. That's not only true of millwrights, that problem is inherent with every craft, every situation, every system at Turkey Point.²⁵

According to the foregoing testimony around the first week of June, Bechtel and Florida Light & Power employees discussed the layoff of millwrights considering as a "major decision" for such action the return of certain bearings to Westinghouse for reborring. At the time of these discussions Bechtel knew that the bearings would be returned in around 2 weeks, which was about the date the alleged discriminatees were laid off on June 17, 1991. The bearings were returned on June 14 or 15, 1991. Moreover, on June 2, 1991, also in the first week of June, a second shift was set up and according to Paddock "[t]here were millwrights hired for the second shift" if Paddock is believed, Bechtel was adding employees at the same time it was considering laying off employees. Moreover, incongruously, Bechtel retained the layoffs during a period when work was alleged to have been diminished because of the return of certain bearings to Westinghouse and laid them off when the work was returned. Additionally, Bechtel was aware of the problem with the hydrogen seal rings around the first week of June and it new that such circumstances would require additional millwright man hours. Thus, it would appear that lack of work as advanced by Bechtel was not the real motive for the layoffs and its claims in this respect are false.

Such conclusion is buttressed by the fact that after the layoffs Bechtel utilized a substantial amount of overtime which would have been sufficient to have furnished work for the layoffs. While the claim is that the overtime work was unanticipated, overtime work, Bechtel knew the time of the layoffs that the overtime used to dismantle and pack the oil

flush equipment was in the offering. Apparently overtime was anticipated which could have been avoided if the layoffs had not occurred.

I conclude therefore that the layoffs effected were not for the reasons advanced by Bechtel, but that Bechtel's reasons were false and fabricated as a defense in this action and that the real reason for the layoffs was because Bechtel, in collusion with the Union, illegally laid off the employee in that they had engaged in internal union activities to the displeasure of the Respondents.

The Layoffs of Michael R. Sterba, Russell Williams, and Henry Dolleman

First: Michael R. Sterba was refused through Local 1026 to work for Bechtel at the Turkey Point site on April 10, 1991, where he was employed as a journeyman millwright on the day shift. As noted, he had nominated Williams for union office and opposed to the assessment increase.

At the end of the May nominating meeting Belliveau said to Sterba, "I thought we were friends. Why did you go against me?" Sterba replied, "I didn't go against you, I went against Jim Flanagan."²⁶ Belliveau remarked in leaving, "I hope you have a lot of money saved up."²⁷

Sterba engaged in conversation with Flanagan and Belliveau on several occasions at the jobsite in March, April, and May. In these conversations Sterba told them that he was opposed to the dues increase, which they favored. At the time Flanagan was treasurer of the Union. During the conversation they also discussed the upcoming election. Flanagan asked Sterba whether he was for Williams; he answered, "yes."

On June 17, 1991, Lohrke, without prior notification, informed Sterba that he was going to be laid off. Sterba said "Well don't I have a say in the matter" because I've been there the longest. I was one of the first ones besides Flanagan on the job." Lohrke replied that ". . . it wasn't up to him, to go see Flanagan because he didn't want any problems on the job with Jim Flanagan."²⁸ Thereupon Sterba asked Flanagan why he was getting laid off, and Flanagan answered, "After you screwed me and the Union, there's no way. . . . You're gone." At the time Sterba was laid off there were four travelers working on the site.

Bibber testified that Sterba was a "hard worker." He also testified that Lohrke said Sterba laid off "because he wanted the layoff." According to Bibber, Sterba had told him that "he had plans in August and that if the job was still going in August, he was going to request a layoff." Nevertheless, Sterba was laid off in June.

Sterba testified that he first requested a 2-week vacation from Lohrke which was not granted to him. Then he asked for a leave of absence from Lohrke, which was also refused. Sterba testified,

Then I asked for a layoff, because I was gonna move my family, and they would not give it to me.

²⁵ Respondent Bechtel points out in its "Brief of Employer, Bechtel" p. 16:

A review of the job description portion of the relevant CWOs establishes that oil flush preparatory work (CWO 500554-00-00001) began as early as May 30, 1991; the actual oil flush using three shifts began on June 18, 1991; the third shift ended on June 26, 1991, with the actual oil flush ending on June 27, 1991; and that post-oil flush disassembly, cleaning, packing and shipping work continued through the July 16, 1991 layoff. Hydrogen seal work on unit 4 (CWO 500533-00-00001) was recorded in mid-June. On June 13 hydrogen seal brackets were taken to the warehouse for shipping to Westinghouse. On June 15 readings were taken of other hydrogen seal brackets until June 22 when millwrights began installing the lower hydrogen seal support brackets. Unit 4 hydrogen seal work continued until July 8, 1991.

Hydrogen seal work on unit 3 (CWO 200009-00-3231586) is first noted on June 29 when the brackets were moved from the warehouse to the turbine deck. Thereafter, until July 10, 1991, the daily work records reveal repeated installations and removals of bearings, bolts and brackets.

²⁶ Williams, whom Sterba had nominated, ran against Flanagan and Belliveau and for State Council Convention.

²⁷ This testimony is uncontroverted.

²⁸ There is an inference in Lohrke's reply that Flanagan was instrumental in choosing Sterba for layoff which jells with Lohrke's testimony that he made the layoff decision with Flanagan.

So then I moved my family before I got laid off; I went back and told them I do not want a layoff.

Sterba was moving his family to Gainesville.

Sterba also made a request to be transferred to the Local in Jacksonville. The transfer did not go through until September. Sterba moved his family to Newberry, Florida, near Gainesville in June. Sterba testified he moved because:

Well, it was mainly the school systems down here in South Florida. I thought my family would have a lot better . . . my kids would have a lot better chance, and I thought that I was gonna get some repercussions with the Union, and I would have a better chance through Jacksonville of getting work.

Well, my plans were to move my family and then come back down here to work. I have family down here in Miami, and I could have stayed down here to work.

Sterba is now working in Miami.

Sterba testified that he changed his mind about the layoff because he "worked it out" where he could still work and move his family; he had a job at Turkey Point and he was uncertain about Jacksonville.

According to Sterba about 3 weeks before the layoff Lohrke asked him whether he still wanted to be laid off. He answered "No."

Lohrke also testified that when he told Sterba of the layoff he "ask Sterba if he likes to stay I can change that lay-off." Lohrke testified that Sterba answered "It don't make any difference anyhow, anymore." I credit Sterba's version.

Sterba also testified that he told Foreman Belliveau that he had changed his mind about his layoff.

Lohrke also testified that Sterba was a "hardworker" and that if Sterba had not requested a layoff he would not have included him in the layoff.

Second: Russell Curtly Williams was also laid off on June 17, 1991. According to Bibber Lohrke told him that Williams had been chosen for layoff "because I wanted them (Williams & Dolleman) off site." Williams was the same person who opposed the union assessment increase, ran for union office against his boss (Flanagan) and the Wells team, read a letter that offended Wells and Wilds, at a union meeting allegedly libeled or slandered Wells and Wilds, and was tried for the latter before a trial committee upon charges filed by Wilds and Wells.

On June 13, 1992, the election date, at about 5 o'clock Wells addressed Williams as follows, "I guess you learned your lesson, motherfucker. I'm going to get you; you're through, George." Williams replied, "I don't know what you're talking about. What are you getting at?" During the election campaign a letter had been circulated to which the name "George Washington" was appended. The letter urged the election of Marcos Vera who was running against the "Team Choice" for treasurer, James Flanagan.

On June 17, 1991, Williams came to the plant as usual. He went to the time shack to pick up his "brass";²⁹ he was

advised by the timeclerk that his "brass wasn't there." The clerk then "went through some files on his desk and had found [Williams'] layoff slip and [his] last check."

Flanagan who had transferred Williams to the night shift on June 10, 1991, shortly before he was laid off, testified, "Russell was a fair millwright at the time. If he's instructed and kept an eye on he did a good job. So, I just figured he [would] be good for the night shift." Further testifying, Flanagan said that he had "fair" confidence in Williams' work.³⁰

According to Flanagan after Bibber and Lohrke had brought to his attention that Williams was not putting out enough work Flanagan said to him, "they [are] keeping an eye on you, we need to work a little smarter. . . ." Williams admitted that he was told by Lohrke that he had "better pick up the pace." He denied that he had been cautioned by Flanagan or Belliveau. Bibber testified that he had talked to Lohrke³¹ about Williams' performance after which Bibber thought Williams' "performance improved." Lohrke also testified that Williams' "picked up speed." "He was improving."

Williams testified that sometime after he was nominated for trustee said to Lohrke that

if there was a problem with my work performance or anything, that I would like to be made aware of it, because I knew that there was an issue involved here with the Union and the problems that were being involved with the Union, and that if there was a problem with my performance, that if he would be fair enough to come or tell me if there was anything I could do to improve my performance or if there was an issue of something I always do that I could improve, because I knew that they were looking for reasons to get rid of me.

Lohrke replied, ". . . he was not involved in any of that business with the Union; it didn't have anything to do with him; that my work performance was adequate and he would let me know if there was a problem with my performance."

A rotor incident occurred involving Williams which apparently teed Bibber off. Flanagan testified, "I instructed Russell Williams to take a [certain] 50 ton Portopower and push on [a] generator coupling and move [a] rotor 50/100ths forward."

Williams described the rotor incident as follows: Flanagan assigned the job to him and directed him what to do. Williams recognized that Flanagan's directions were in error. "I went and got Jim which brought Werner Lohrke and Dick Bibber." Bibber was "upset" that the generator had been attempted to be moved in this manner.

Williams testified:

We never attempted to move it. We set up the way the foreman instructed us to set it up, at which time I considered it a real problem, and I went to my supervisor about it, to clarify what was instructed to me to do.

²⁹ "Brass" was an employee medallion that each employee has with an employee number, which employees are required to pick up in the morning and turn in when they leave the job.

³⁰ There was less supervision on the night shift.

³¹ According to Lohrke, Bibber told him to "get him off the job, I don't want him to work on my machine."

Williams explained the error to Flanagan, Lohrke, and Bibber, which had it occurred would have been very costly. Later in the presence of Lohrke, speaking to Flanagan, Williams said, "Look, Jim you know that you did it; you told me to do it this way." Flanagan replied "Well, maybe I did, but you know better than that to do it that way." Williams responded, "... that's why I came and got you."

According to Flanagan he asked Williams why he was "pushing it there." Williams replied, "That's where he thought he wanted me to push it."

Lohrke's version of the rotor incident follows: "I walked to it and heard Flanagan talking to Williams." Flanagan said that Williams "could have done lots of damage to it . . . you guys been told before, if you got any question, not sure, see Flanagan . . . or Bibber." Of Bibber, Lohrke testified, "He didn't say much. He just throw his hard hat on the floor and walked away."

There were no measurement at the time. Lohrke could not explain why he did not fire Williams on the spot.³²

After the rotor incident, according to Bibber, he told Lohrke that he wanted Williams removed from the site. Lohrke did not accommodate.

When Williams was transferred to the night shift Lohrke testified that he said to Flanagan "I want some people on nights. We had some new hires, we put them on some nights too." (*Italics hired.*) Williams had worked for Bechtel several times before. On one occasion he had been employed as a foreman for about 6 months. Williams had been laid off four or five times at Turkey Point. Williams testified the only time while working for Bechtel that anything had been said about his work was when Lohrke said, "Put some elbow grease into what you're doing." He complied.

Third: In the union election of June 13, 1991, Henry Dolleman, who at the time was employed by Bechtel at the Turkey Point site, was running against incumbent Wells for his \$67,000-a-year job as business manager and financial secretary. Dolleman had run against Wells in a prior election.

Dolleman was first employed by Bechtel May 6, 1991. He was laid off on June 17, 1991. Dolleman worked for a period of about 6 weeks. Dolleman was assigned to cleaning nuts and bolts. He used a bench grinder "with a grinder wheel . . . on one end a wire brush . . . on the other end."

On June 17, when Dolleman reported for work he asked Flanagan if he could be given a new assignment where he could learn more about turbines. Flanagan replied that he needed Dolleman for cleaning nuts and bolts. During that day several people told Dolleman that he was being laid off. In the afternoon about 1 o'clock Flanagan directed Dolleman to get his lunchbox; that he was being laid off. Flanagan said, "things were a little slow right now." The explanation on Dolleman's notice of termination was "Reduction in Force" (G.C. Exh. 12). It was signed by Flanagan.

Bibber apparently considered Dolleman a very unsatisfactory employee and complained to Lohrke about his work habits three times.³³ Some of the habits of which Bibber was critical were: he cleaned nuts and bolts slowly; he engaged in conversation when he should have been working; and he

spent too much time smoking. Finally Bibber demanded of Lohrke that Dolleman be put off site that "very same day."

On that very same day, according to Wells, Flanagan mentioned to him during a telephone conversation about 10 days before the election that "Dick Bibber had gone nuclear, was his words, about Henry Dolleman. He was going to fire him on the spot." "This is really playing into their hands. It's going to look like [we] had something to do with it." Wells explained that "there had been mention on the floor of the meeting that people were putting their livelihoods on the line to run against me and my team that I nominated. . . . in fact, he had put it in a letter three years previously when he ran against me." Flanagan asked Wells whether he should try to stop the discharge. Wells replied "... if you can suggest . . . keep him on, it would be better." Wells testified he made this suggestion because "it wouldn't look like there was hanky panky played before the election, and it wouldn't look bad towards myself [and] Jim."

Flanagan testified that about 10 days before the election Bibber told him he wanted Dolleman fired. Shortly afterwards Flanagan called Wells and discussed Dolleman's firing with him. Flanagan further testified

When Dick Bibber came and he—Dick Bibber—was screaming and hollering about getting [Dolleman] off the job.

I had a discussion with Werner Lohrke about the elections we were having at the time, that if we laid him off at the time, and if he somehow became business agent, he might have it out for Bechtel for firing him on the job. . . . And the elections and something like this coming out of it, and then believing that it was all done for policies.

Flanagan asked Lohrke to keep him "if it would be possible."

Lohrke testified that Bibber had asked him to "get" Dolleman "off of the job." Lohrke told Flanagan that he was going to let Dolleman go.³⁴ According to Lohrke, Flanagan "come back to [him] and asked [him] to keep him until after the election." Flanagan advised Lohrke he wanted him to keep Dolleman "because he didn't want to stir up any problems with the—they say it was because the election coming up, or something. That's what he said. He told me he was running for office." Lohrke then took the matter up with Bibber. Bibber agreed to keep Dolleman and said "we'll do it then after the election." Lohrke testified, "Right after election I was supposed to fire Mr. Dolleman. I talked to Bibber again and he agreed just lay him off, instead of fire him."

Bibber testified that Lohrke came to him and presented the union problems connected with Dolleman's discharge. Bibber thought about it and near the end of the day he told Lohrke that he was "receptive to his request," but Dolleman should not continue in employment beyond the first scheduled lay-off. At that time according to Bibber no layoff was scheduled.

Dolleman was laid off on June 17, 1992. Dolleman testified that Flanagan had never spoken to him about his work performance and Lohrke told him once that he should use a

³² Apparently the answer was that Williams was not at fault.

³³ Bibber testified that he first spoke to Lohrke about Dolleman's performance around March 1991. (Dolleman started working for Bechtel on May 6, 1991.)

³⁴ "Flanagan called the Union Hall and the business agent ask[ed] him if we can wait until after the election."

bigger wire wheel. Bibber never spoke to Dolleman at all about his work. When asked why he did not, Bibber replied "That's a good question; I don't know. I just didn't."

Lohrke testified that he had never spoken to Dolleman about his work performance. Flanagan testified that he had spoken to Dolleman once about his performance.

Dolleman worked on Saturday and was laid off on Monday. No one had told him of his forthcoming layoff.

During the election campaign, Dolleman campaigned with zeal. He issued a campaign letter a week before the election very critical of his opponent. One paragraph read:

My opponent's experience speaks for itself. Dues are up,³⁵ Representation is down and he is a tyrant. Do we need his kind of experience? It hasn't done us any good during the last three years. [G.C. Exh. 14.]

Later on November 18, 1991, Dolleman went to work for Bechtel on the Dania site. His work there was deemed satisfactory.

Fourth: In *Wright Line*, 251 NLRB 1083 (1980), the Board established that if the General Counsel makes a prima facie³⁶ showing sufficient to support inference that protected conduct was the "motivating factor" in the employer's decision to discharge or lay off, the burden shifts to the employer to demonstrate that the discharge or layoff would have taken place even in the absence of protected conduct.

In the case of the three alleged discriminatees, Sterba, Williams, and Dolleman, the General Counsel's prima facie case is supported by the following credible evidence.

1. Bechtel's daily timesheets reveal that at the time of the layoffs on June 17, 1991, there was not a lack of work sufficient to justify the alleged reduction of force.³⁷

2. Shortly before Bechtel effected the layoff it had established a second shift and was in the process of establishing a third shift to service the oil flush.

3. The three employees, all of whom were active in their opposition to the union administration and the Wells team in the union election, were laid off 3 days after the election.

4. Bechtel was aware of the identity of the Union's officers and that they had run for election in the union election.

³⁵ Dolleman suggested that dues be reduced.

³⁶ "Under Board precedent, a prima facie case may be established by the record as a whole and is not limited to evidence presented by the General Counsel. . . . The Board's precedent allows the judge to analyze the prima facie case based on all record evidence." *Greco & Haines, Inc.*, 306 NLRB 634 (1992).

³⁷ The General Counsel has pointed out:

The layoff took place on Monday, June 17. Thereafter, for the first and only time since at least May 31, employees had to work at double time rates on the Sunday following the layoff (June 23), when they worked over 100 hours. Put another way, there was plenty of work for Dolleman and the others who were laid off on June 17. In fact, so much work that other millwrights had to work the following Sunday in order to make up the work the four laid-off employees would have performed had they not been laid off. Also, by the second week after the June 17 layoff, the total number of hours millwrights worked exceed the hours worked before the layoff. Additionally, the average number of daily overtime hours worked escalated from 49 the week before the layoffs to 75 the week after the layoffs. Indeed the average number of hours worked per employee per week increased 17 percent the week after the layoff and 22 percent 2 weeks after the layoff. It is also significant that Bibber, Lohrke, and Flanagan gave inconsistent reasons for layoffs.

5. The knowledge of Flanagan, as a supervisor within the meaning of the Act, under the circumstances here is imputed to Bechtel.

In the case of Sterba, the General Counsel's prima facie case is supported by the following credible evidence:

1. Sterba had opposed the dues increase which was favored by his general foreman, Flanagan, and the union administration.

2. Sterba nominated Williams for a union office which Sterba's general foreman, Flanagan, was seeking.

3. Belliveau, a part of the union administration, lodged a threat of reprisal against Sterba after he had nominated Williams.

4. When Sterba inquired why he was laid off Lohrke stated that "it wasn't up to him, to go see Flanagan because he didn't want any problems on the job with Jim Flanagan."

5. When Sterba asked Flanagan why he was laid off Flanagan answered, "After you screwed me and the Union, there's no way . . . [y]ou're gone."

6. At the time Sterba was laid off there were four travelers working.

7. Lohrke viewed Sterba as a hard worker and otherwise he would not have been laid off.

8. Sterba stated that although he had asked for a layoff, which had been denied, he changed his mind which he had communicated to Lohrke and Belliveau.

9. Sterba had been cleared for layoff by Lohrke with Flanagan.

In the case of Russell C. Williams the prima facie case is supported by the following credible evidence.

1. Williams was laid off on the same day as Sterba who was discriminatorily discharged because of his internal union activities.

2. Williams had criticized and displeased Wilds and Wells to the point where they had filed charges with the Union against him in order to insulate their election campaigns against Williams' claims.

3. Williams had opposed the dues increase favored by the administration.

4. Williams had run against his boss, Flanagan, and the Wells team for a union office.

5. Wells threatened Williams with reprisals. "I [am] going get you; you're through, George."

6. Williams shortly before he was laid off was transferred to the night shift because he was a "fair millwright" and "would be good for the night shift," which negates his alleged incompetency as a millwright.

7. After being told to use more elbow grease Williams' performance improved.

8. Williams had previously satisfactorily worked for Bechtel and on occasion filled the job as foreman.

9. There was a "large amount" of work to be done when Williams was laid off.

In the case of Henry Dolleman the General Counsel's prima facie case is supported by the following evidence:

1. Dolleman was opposed to a dues increase which was favored by the Union's Administration.

2. Dolleman was running against Wells \$67,000-a-year job business manager and financial secretary.

3. Dolleman was laid off 3 days after he lost the union election.

4. Dolleman had never been criticized for bad work habits or threatened with discharge.³⁸

5. No one in management had advised Dolleman he was slated for layoff until the day of the layoff. His layoff was precipitous; he worked on Saturday and was laid off on Monday.

6. Dolleman was rehired by Bechtel at Dania where his work was rated satisfactory.

7. Dolleman's job was a lesser skilled job which did not appear to warrant the close scrutiny which Bibber claims he gave it.

Apparently the Respondent's position is that the layoffs were effected because Bibber had determined that there was a lack of available work; and that Williams and Dolleman were laid off because Bibber wanted them off site; and that Sterba was laid off because he asked to be laid off. To support the Respondent's position, except as to Sterba, Bibber must be found to be a credible witness. I do not find Bibber to be a credible witness. I have carefully considered demeanor³⁹ Bibber's testimony was tailored to benefit Bechtel and the Union and to afford them pretense for their unlawful action; he assumed the blame for their misconduct. Several factors no doubt caused the slanting of his testimony. One may have been fear of union reprisals or a desire to court union favor. According to Bibber's testimony both he and Lohrke yielded to the Union's demand to help the Wells' slate from facing the charge in the election that members who ran against the incumbent administration would put their jobs in jeopardy. Thus according to Bibber, he and Lohrke assisted the incumbents in their election bid and performed for them a favor. Moreover, Lohrke said he wanted no problems with Flanagan whom he knew to be a union officer. Another factor which may have inferenced Bibber's testimony, is that he may have been grateful that his on had been accepted in the Union trainee program and employment at Bechtel.

In regard to Dolleman, Bibber insisted that he wanted him off site yet incongruously neither he nor Lohrke spoke to Dolleman about his alleged work related deficiencies. Indeed, if Bibber is to be believed, he, a busy man, spend what appears to be an inordinate amount of time watching Dolleman. As I observed Bibber did not seem to be the kind of busy, active manager with many responsibilities who would devote so much time watching a low level employee. Moreover, Bibber did not appear to be the kind of manager who would allowed Dolleman to continue without bringing his objectionable work habits to his attention. Nor did Bibber appear to be the kind of person who would go "nuclear" over Dolleman's conduct. The motivating reason behind Dolleman's discharge was the same as that for Sterba and Williams.

In regard to Williams, he was targeted for the same reason as Dolleman. Contrary to the assertion of Bibber and the Respondents, Williams was a good employee; his prior work

record with Bechtel was good; he was considered a fair millwright when he was transferred to the night shift; in respect to the rotor incident he was sharp enough to catch an erroneous instruction. Nevertheless, Respondent Bechtel claims that it laid off Williams because Bibber wanted him fired because of the rotor incident. If that claim were valid there is no explanation as to why Lohrke did not fire Williams on the spot or as to why he was transferred to the night shift where he would "be good" for the night shift. Considering Williams' length of service, his prior good work record, his ability as a millwright, and his choice for the night shift it appears that in the ordinary course of events he would not have been chosen for layoff. No credible evidence has been offered to support a finding that except for the discrimination levied against him, he would not have stayed on the night shift.

Since Sterba was a good employee with long seniority and one whom Bechtel would have kept, and since he had advised Bechtel that he wanted to stay, no credible reason obtains for his layoff if discrimination is not considered. Had not Flanagan and the Union interposed hardworking Sterba would have remained. Flanagan and the Union called the shots.

The relationships between the three layoffs are inextricable. The nexus between the layoffs are obvious. The real motive⁴⁰ of Bechtel, in laying off the three employees, was to accommodate the Union which wanted Bechtel to lay off the three employees in reprisal for their participation in inner union activities. The message to the union membership obviously could not have been lost.

The General Counsel's consolidated complaint alleging that the Respondent, by the layoff of Sterba, Williams, and Dolleman, on June 17, 1991, violated Section 8(a)(1) and (3) of the Act and that Local 1026 violated Section 8(b)(1)(A) by questioning Bechtel to make such layoffs because of said employees' participation in internal union affairs is supported by a preponderance of the credible evidence in the record as a whole, I so find. See *Office Employees*, 307 NLRB 264 (1992). I am convinced that Sterba, Williams, and Dolleman would not have been laid off if they had not engaged in activities protected by Section 7 of the Act.

According to the testimony of Wells, Flanagan, Lohrke, and Bibber, Bechtel, upon the request of the Union through Flanagan, in delaying the discharge of Dolleman, accommodated the Union by removing any implication that, by discharging Dolleman, jobs of candidates who ran against the Wells team were in jeopardy. Thus Bechtel aided the prospects of the incumbents including, of course, Wells and Flanagan, who engineered the incident. Whether or not Lohrke, Bibber, or Flanagan were telling the truth or lying, the indication is that Bechtel was willing to accommodate the union administration and placate it either by withholding

³⁸ Lohrke and Bibber each admitted that they had never spoken to Dolleman about his work habits. Dolleman denied that Flanagan had spoken to him.

³⁹ As stated by the Board in *Roadway Express*, 108 NLRB 875 (1954):

[C]redibility findings may rest entirely upon evidence through observation which words do no [sic] and could not preserve or describe.

⁴⁰ "[T]he 'real motive' of the employer in an alleged § 8(a)(3) violation is decisive." *NLRB v. Brown Food Store*, 380 U.S. 278, 287 (1965). "It is the 'true purpose' or 'real motive' in hiring or firing that constitutes the test." *Teamsters Local 357 v. NLRB*, 365 U.S. 667 (1961). "Section 8(a)(3) prohibits discrimination in regard to tenure or other conditions of employment to discourage union membership. . . . It has long been established that a finding of violation under this section will normally turn on the employer's motivation." *American Ship Building Co. v. NLRB*, 380 U.S. 300, 311 (1965).

a discharge or fabricating testimony as a defense in this action. The same persuasion that induced Bechtel to favor the Union by not discharging Dolleman conditioned the layoffs of Sterba, Dolleman, and Williams. It is again obvious that Bechtel accommodated the Union and advanced its objective to teach members who bucked the administration a lesson. Conveniently, at the time the boom was lowered, Wells and Flanagan were safely elected. None connected with the incident could be so naive as to not know the effect the layoffs have in the union would have had on the union membership following so closely on the heels of the election. It suggested "hanky-panky." Indeed it is significant that Wells and his team waited until the effect of their misconduct would not adversely effect their own election prospects but would convey a message to the union membership. Nevertheless, Bechtel acquiesced. It must have known what was occurring and what the inferences were. The layoffs were in retaliation for the employees' exercise of their rights to engage in internal union activities.

Even had I not found that the layoff was machinated I would find that the choice of Sterba, Williams, and Dolleman for layoff was discriminatory.

The Dual Status of James Flanagan

Flanagan, as I have found, was a supervisor within the meaning of the Act. He also, during his period of supervisorship, was the treasurer, District Council delegate, State Council Convention, and member of the executive board of the Union. He was present at the executive board which considered accusation against Williams, participated in Williams' trial, and allegedly intervened in the Dolleman incident. Flanagan, as a supervisor, also cleared the layoffs of Sterba, Williams, and Dolleman, employees who were laid off because of their internal union activities. Flanagan played both ends; Bechtel did not demur.

"Employees have the right to be represented in collective bargaining negotiations by individuals who have a single minded loyalty to their interests." *Nassau & Suffolk Contractors Assn.*, 118 NLRB 174, 187 (1957).

Bechtel's employment of Flanagan as a supervisor within the meaning of the Act offended this well-established rule.

Under the circumstances appearing before me, Bechtel violated Section 8(a)(2) and (1) of the Act by employing Union Officer James Flanagan as a supervisor within the meaning of the Act.

The Failure to Recall Henry Dolleman at the Florida Power and Light Company

Dolleman was referred to Bechtel's Florida Power and Light Company's site on November 18, 1991, by the Union, and was laid off on December 6, 1991. Although millwrights were hired through the union hall, after the layoff Dolleman was not recalled by name. The General Counsel claims that the failure to recall Dolleman by name was discriminatory. Dolleman asserts that the general foreman and union vice president, Richard Matthews, told the laid-off millwrights that they would be recalled. Matthews did not affirm Dolleman's testimony.

I do not find that the General Counsel has established a prima facie case and, accordingly, I dismiss the complaint in Case 12-CA-14856.⁴¹

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and it will effectuate the purposes of the Act for jurisdiction to be exercised.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By permitting Respondent Local 1026's treasurer, James Flanagan, to serve as a supervisor within the meaning of the Act in on or about January 1991 to July 16, 1991, Respondent Bechtel rendered assistance and support to Respondent Local 1026 in violation of Section 8(a)(1) and (2) of the Act.

4. By laying off Michael R. Sterba, Russell C. Williams, and Henry Dolleman because they engaged in internal union activities of Respondent Local 1026 and in order to discourage employees from engaging in such activities, Respondent Bechtel violated Section 8(a)(1) and (2) of the Act.

5. By unlawfully causing Respondent Bechtel to lay off Michael R. Sterba, Russell C. Williams, Henry Dolleman, Respondent Local 1026 violated Section 8(b)(1)(A) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, I recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Having also unlawfully laid off Michael R. Sterba, Russell C. Williams, and Henry Dolleman and has failed to reinstate them in violation of the Act, it is recommended that Respondent Bechtel remedy such unlawful conduct. In accordance with Board policy, it is recommended that Respondent Bechtel offer the above-named persons immediate and full reinstatement to their former positions or, if such position no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, dismissing, if necessary, any employee hired on or since the date of their layoffs to fill the positions, and make them whole for any loss of earnings they may have suffered by reason of Respondent Bechtel's unlawful acts herein detailed, by payment to them of a sum of money equal to the amount they would have earned from the date of their unlawful discharges to the date of valid offers of reinstatement, less their net interim earnings during such periods, with interest thereon, to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Local 1026 shall also be liable for any backpay owed said discriminatees.

⁴¹ It would seem highly unlikely that Bechtel, having been charged with discrimination against Dolleman on September 24, 1991, in the consolidated complaint would have almost immediately committed the same offense.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴²

ORDER

A. The Respondent, Bechtel Construction Company, Florida City, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist

(a) Unlawfully laying off employees because they engaged in internal union activities and in order to discourage employees from engaging in such activities.

(b) Unlawfully assisting and supporting a union by permitting an officer of a union to serve as its supervisor within the meaning of the Act.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Michael R. Sterba, Russell C. Williams, and Henry Dolleman immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(b) Remove from its files any reference to the unlawful layoffs of the above-named employees in writing that this has been done and that the discharges will not be used against them in any way.

(c) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Cape Canaveral, Florida establishment copies of the attached notice marked "Appendix A."⁴³ Copies

⁴² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁴³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

B. The Respondent, Millwrights, Piledrivers, Divers, and Highway Constructors Local Union 1026, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, its officers, agents, successors, and assigns, shall

1. Cease and desist

(a) Unlawfully causing the layoffs of employees because they engaged in internal union activities and in order to discourage employees from engaging in such activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Advise the Bechtel Construction Company that it has no objection to its reinstatement of Michael R. Sterba, Russell C. Williams, and Henry Dolleman.

(b) Make Michael R. Sterba, Russell C. Williams, and Henry Dolleman whole for any loss of earnings and other benefits they may have suffered by reason of the unfair labor practices found against Local 1026.

(c) Post at its Hallandale, Florida union hall copies of the attached notice marked "Appendix B."⁴⁴ Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER RECOMMENDED that the consolidated complaint be dismissed insofar as it alleges violations of the Act other than those found in this decision.

⁴⁴ See fn. 43 supra.